

Assembly Bill No. 1085

Passed the Assembly June 27, 2011

Chief Clerk of the Assembly

Passed the Senate June 23, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend, repeal, and add Section 46601 of the Education Code, relating to school attendance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1085, Davis. School attendance: interdistrict attendance.

Existing law authorizes the governing boards of 2 or more school districts to enter into an agreement for the interdistrict attendance of pupils who are residents of the school districts. If either school district fails to approve the interdistrict attendance of a pupil, or in the case of the failure or refusal of the school districts to enter into an agreement, existing law authorizes the person having legal custody of the pupil to appeal to the county board of education in accordance with a prescribed procedure. Existing law requires the county board of education to determine, within 30 calendar days after the appeal is filed, whether the pupil should be permitted to attend in the school district in which the pupil desires to attend and the applicable period of time.

This bill would state the intent of the Legislature that school districts and county boards of education use their best efforts to expeditiously process interdistrict attendance appeals. The bill also would require, until July 1, 2015, that, in a class 1 county, which is defined in existing law as a county with 1994–95 average daily attendance of more than 500,000, or a class 2 county, which is defined in existing law as a county with 1994–95 average daily attendance of at least 180,000 but less than 500,000, the county board of education determine whether the pupil should be permitted to attend the school district in which the pupil desires to attend and the applicable period of time within 40 schooldays after the appeal is filed rather than 30 calendar days after the appeal is filed.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature that school districts and county boards of education make best efforts to process interdistrict attendance appeals in an expeditious fashion.

SEC. 2. Section 46601 of the Education Code is amended to read:

46601. (a) If, within 30 calendar days after the person having legal custody of a pupil has so requested, the governing board of either school district fails to approve interdistrict attendance in the current term, or, in the absence of an agreement between the districts, fails or refuses to enter into an agreement, the district denying the permit, or, in the absence of an agreement, the district of residence, shall advise the person requesting the permit of the right to appeal to the county board of education.

(b) If, within 14 calendar days after the commencement of instruction in a new term in each of the school districts, respectively, when the person having legal custody of a pupil has so requested separately of each district not later than 30 calendar days prior to the commencement of instruction in that term in that district, the governing board of either district fails to approve interdistrict attendance in that term, or, in the absence of an agreement between the districts to permit that attendance, fails or refuses to enter an agreement, the district denying the permit, or, in the absence of an agreement, the district of residence, shall advise the person requesting the permit of the right to appeal to the county board of education.

(c) Notifying districts shall also, in all instances, advise persons making unsuccessful requests for interdistrict attendance of all of the following:

(1) The person having legal custody may appeal, within 30 calendar days of the failure or refusal to issue a permit, or to enter into an agreement allowing the attendance, to the county board of education having jurisdiction over the district of residence of the parent or legal guardian or person having legal custody. Failure to appeal within the required time is good cause for denial of an appeal. An appeal shall be accepted only upon verification by the county board's designee that appeals within the districts have been exhausted. If new evidence or grounds for the request are introduced, the county board may remand the matter for further consideration by the district or districts. In all other cases, the appeal shall be granted or denied on its merits.

(2) (A) (i) The county board of education shall, unless clause (ii) is applicable, within 30 calendar days after the appeal is filed, determine whether the pupil should be permitted to attend in the

district in which the pupil desires to attend and the applicable period of time.

(ii) The county board of education in a class 1 or class 2 county shall, within 40 schooldays after the appeal is filed, determine whether the pupil should be permitted to attend in the district in which the pupil desires to attend and the applicable period of time.

(B) In the event that compliance by the county board within the time requirement for determining whether the pupil should be permitted to attend in the district in which the pupil desires to attend is impractical, the county board or the county superintendent of schools, for good cause, may extend the time period for up to an additional five school days. The county shall provide adequate notice to all parties of the date and time of any hearing scheduled and of the opportunity to submit written statements and documentation and to be heard on the matter pursuant to rules and regulations adopted by the county board of education in accordance with this chapter. The county board rules may provide for the granting of continuances upon a showing of good cause. The county board of education shall render a decision within three schooldays of any hearing conducted by the board unless the person who filed the appeal requests a postponement.

(C) In a class 1 or class 2 county, the county board rules may provide for any hearing pursuant to this section to be conducted by a hearing officer pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code, or by an impartial administrative panel of three or more certificated persons appointed by the county board of education. Section 27722 of the Government Code is applicable to a hearing by any impartial administrative panel and, for purposes of this section, the term “hearing officer” in Section 27722 of the Government Code includes an impartial administrative panel. No member of the impartial administrative panel shall be a member of the county board of education, nor be employed by the school district of residence or the district of desired attendance.

(D) The definitions of “class 1 county” and “class 2 county” in subdivision (e) of Section 48919.5 apply to this section. If the hearing officer is not authorized to decide whether the pupil should be permitted to attend in the district in which the pupil desires to attend, the county board of education, within 10 days of receiving

the recommended decision pursuant to subdivision (b) of Section 27722 of the Government Code, shall render a decision.

(3) The county supervisor of attendance, or other designee of the county superintendent of schools, shall investigate to determine whether local remedies in the matter have been exhausted and to provide any additional information deemed useful to the county board in reaching a decision.

(4) If the interdistrict attendance involves school districts located in different counties, the county board of education having jurisdiction over the district denying a permit, or refusing or failing to enter into an agreement to allow for the issuance of a permit, shall have jurisdiction for purposes of an appeal. If both districts deny a permit, or refuse or fail to enter into an agreement to allow for the issuance of a permit, the county board having jurisdiction over the district of residence shall have jurisdiction for purposes of an appeal and, upon granting a pupil's appeal, shall seek concurrence in the decision by the county board of the other county which shall provide adequate opportunity for the district under its jurisdiction to be heard on the matter before making a decision. If the two county boards do not then concur, the pupil's appeal shall be denied.

(5) Pupils who are under consideration for expulsion, or who have been expelled pursuant to Sections 48915 and 48918, may not appeal interdistrict attendance denials or rescissions while expulsion proceedings are pending, or during the term of the expulsion.

(d) This section shall become inoperative on July 1, 2015, and, as of January 1, 2016, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2016, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 46601 is added to the Education Code, to read:

46601. (a) If, within 30 calendar days after the person having legal custody of a pupil has so requested, the governing board of either school district fails to approve interdistrict attendance in the current term, or, in the absence of an agreement between the districts, fails or refuses to enter into an agreement, the district denying the permit, or, in the absence of an agreement, the district of residence, shall advise the person requesting the permit of the right to appeal to the county board of education.

(b) If, within 14 calendar days after the commencement of instruction in a new term in each of the school districts, respectively, when the person having legal custody of a pupil has so requested separately of each district not later than 30 calendar days prior to the commencement of instruction in that term in that district, the governing board of either district fails to approve interdistrict attendance in that term, or, in the absence of an agreement between the districts to permit that attendance, fails or refuses to enter an agreement, the district denying the permit, or, in the absence of an agreement, the district of residence, shall advise the person requesting the permit of the right to appeal to the county board of education.

(c) Notifying districts shall also, in all instances, advise persons making unsuccessful requests for interdistrict attendance of all of the following:

(1) The person having legal custody may appeal, within 30 calendar days of the failure or refusal to issue a permit, or to enter into an agreement allowing the attendance, to the county board of education having jurisdiction over the district of residence of the parent or legal guardian or person having legal custody. Failure to appeal within the required time is good cause for denial of an appeal. An appeal shall be accepted only upon verification by the county board's designee that appeals within the districts have been exhausted. If new evidence or grounds for the request are introduced, the county board may remand the matter for further consideration by the district or districts. In all other cases, the appeal shall be granted or denied on its merits.

(2) (A) The county board of education shall, within 30 calendar days after the appeal is filed, determine whether the pupil should be permitted to attend in the district in which the pupil desires to attend and the applicable period of time.

(B) In the event that compliance by the county board within the time requirement for determining whether the pupil should be permitted to attend in the district in which the pupil desires to attend is impractical, the county board or the county superintendent of schools, for good cause, may extend the time period for up to an additional five schooldays. The county shall provide adequate notice to all parties of the date and time of any hearing scheduled and of the opportunity to submit written statements and documentation and to be heard on the matter pursuant to rules and

regulations adopted by the county board of education in accordance with this chapter. The county board rules may provide for the granting of continuances upon a showing of good cause. The county board of education shall render a decision within three schooldays of any hearing conducted by the board unless the person who filed the appeal requests a postponement.

(C) In a class 1 or class 2 county, the county board rules may provide for any hearing pursuant to this section to be conducted by a hearing officer pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code, or by an impartial administrative panel of three or more certificated persons appointed by the county board of education. Section 27722 of the Government Code is applicable to a hearing by any impartial administrative panel and, for purposes of this section, the term “hearing officer” in Section 27722 of the Government Code includes an impartial administrative panel. No member of the impartial administrative panel shall be a member of the county board of education, nor be employed by the school district of residence or the district of desired attendance.

(D) The definitions of “class 1 county” and “class 2 county” in subdivision (e) of Section 48919.5 apply to this section. If the hearing officer is not authorized to decide whether the pupil should be permitted to attend in the district in which the pupil desires to attend, the county board of education, within 10 days of receiving the recommended decision pursuant to subdivision (b) of Section 27722 of the Government Code, shall render a decision.

(3) The county supervisor of attendance, or other designee of the county superintendent of schools, shall investigate to determine whether local remedies in the matter have been exhausted and to provide any additional information deemed useful to the county board in reaching a decision.

(4) If the interdistrict attendance involves school districts located in different counties, the county board of education having jurisdiction over the district denying a permit, or refusing or failing to enter into an agreement to allow for the issuance of a permit, shall have jurisdiction for purposes of an appeal. If both districts deny a permit, or refuse or fail to enter into an agreement to allow for the issuance of a permit, the county board having jurisdiction over the district of residence shall have jurisdiction for purposes of an appeal and, upon granting a pupil’s appeal, shall seek

concurrence in the decision by the county board of the other county which shall provide adequate opportunity for the district under its jurisdiction to be heard on the matter before making a decision. If the two county boards do not then concur, the pupil's appeal shall be denied.

(5) Pupils who are under consideration for expulsion, or who have been expelled pursuant to Sections 48915 and 48918, may not appeal interdistrict attendance denials or recisions while expulsion proceedings are pending, or during the term of the expulsion.

(d) This section shall become operative on July 1, 2015.

Approved _____, 2011

Governor